LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 17 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOSEPH P. RUTH, **Respondent, Pro Se**
1325 Glenarm Street
Denver, Colorado

Messrs. Oberlin, Maky & Donnelly
1405 East Sixth Street
Cleveland, Ohio
Malcolm E. MacDougall, Esq.
144 West Colfax Avenue
Denver, Colorado
Charles D. Bromley, Esq.
330 Majestic Building
Denver, Colorado
Counsel of Record for Respondents.

July 29, 1966

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

INDEX

	PAGE
Opinions below	2
Jurisdiction	2 & 7
Questions presented	4
Constitution invovled	10
Statutes	9
Statement	10
Reasons for granting the writ	13

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No.

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

TO: The Honorable, The Chief Justice, and Associate Justices of the Supreme Court of the United States:

Joseph P. Ruth, the petitioner herein, prays that writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in the above-entitled case on June 14, 1966.

Opinions Below

The opinion of the Circuit Court of Appeals for the Tenth Circuit is unreported, and is contained in letter from the Clerk dated June 14, 1966.

Jurisdiction

The judgment of the Circuit Court of Appeals was entered on June 1, 1966. Rehearing was denied on June 14, 1966. The jurisdiction of the Court is invoked under 28 U.S.C. §1254(1), Revised Rule 23.

My patent No. 2,611,680 (Exhibit 1) was held valid in the United States District Court for the Southern Jurisdiction (Sixth Circuit) by Judge Druffel on September 18, 1959 (Exhibit 2), and was held invalid on October 18, 1963, by Judge Christenson in the United States District Court for the District of Colorado. Case No. 8698.

My attorneys prevented me from making before Judge Christenson in Denver the same demonstration of the evidence of invention that I presented to Judge Druffel in Cincinnati (Exhibit 3).

Exhibit 4 is the Court Reporter's record of the conduct of Exhibit "59" in Cincinnati, and Exhibit 5 is the graphic representation of Exhibit "59" which would have made known to Judge Christenson the health hazard that results from the 50 pounds of toxic nitric acid gas, inherent in all diesel bus exhaust, which each diesel bus in city transit service discharges each day in city air. From the exhaust of any General Motors diesel bus, I can by my

conditioner method patent No. 2,611,680, convert the 50 gallons of water in the MRX-40-S conditioner, the size for the 6-71 General Motors diesel engine, to 2.65 pH nitric acid liquid (HNO_3) in ten minutes. General Motors Corporation, which builds 90% of the diesel power used in inter- and intra-city transit service, controls all of the major newspapers in the United States by the $114 million it spends annually for advertising, and hides this deadly characteristic of diesel bus exhaust by corrupting pseudo-scientists and public health officials, who feloniously attribute the blinding and toxic smog that diesel exhaust creates in our cities to the public's gasoline automobiles, the trash they burn, and the cigarettes they smoke. See letter to Joseph Polomba of 8/30/61 (Exhibit 6), and letter to Scientific American dated March 27, 1963 (Exhibit 7).

The demonstration of the operation of my patent No. 2,611,680 by Exhibits 4 and 5 herein, prohibited by my lawyers, would have shown that it is the *nitric acid gas inherent in diesel exhaust* and put out by the preponderance of General Motors diesel power in city transit service, and not the public's autos and trashburners and cigarettes, which is responsible for the city air pollution debacle General Motors diesel power has wrought on the public health and which their public relations adroitly lay onto the public (Exhibits 6 and 7).

My method patent detoxifies the anhydrous nitric acid gas in diesel exhaust from hundreds of General Motors 6-71 diesel engines in order that they may be used safely underground (Exhibit 8).

Questions Presented

This writ, if granted, will force the disclosure of the hidden public health hazard resulting from the indiscriminate discharge of the 0.1% of toxic anhydrous nitric acid gas inherent in diesel bus exhaust (Exhibit 9), which by industrial hygienists is rated 20 times more toxic than is the carbon monoxide in gasoline automobile exhaust (Exhibit 10).

By the same demonstration, in the same machine, using the same size gasoline engine's exhaust, it will be shown that this smog-forming toxic nitric acid gas is not present in normal gasoline engine exhaust. In fact, there is no acid in such exhaust.

It will also be shown that General Motors knew, in April of 1951 (Exhibit 11), of this deadly characteristic of their 6-71 diesel bus engine exhaust, but persisted in selling buses for use in city transit service with their 6-71 diesel engine, attributing the same death and smog they brought to our cities (Exhibit 11) it created in the Idarado mine, and which they now, by pseudo press releases (Exhibit 7), attribute to the public's gasoline automobiles, the trash they burn, and the cigarettes they smoke. With this knowledge about the deadly toxic nitric acid gas inherent in their diesel bus engine's exhaust, General Motors, by control of the press, has made an enigma out of the city air pollution which their diesel buses have wrought on our cities, thereby forcing our government and the public to spend billions in a futile effort to escape the silent killer that stalks our streets and which my Cincinnati Exhibit "59" would show comes from their diesel bus.

The 400% rise in emphysema in our cities dates from the displacement of the electric street car by General Motors diesel buses. The destruction to the lungs of our children, 75% of whom live in our cities, by this nitric acid gas from General Motors diesel buses will prevent their lungs from ever reaching full development. The honest doctor is helpless in this General Motors-made dilemma, as recognized by Dr. Fredrick G. Burke, Professor of Pediatrics at Georgetown University, who says: "An entirely new, broad advance in the field of chronic respiratory ailments in children is needed if significant medical breakthroughs are to be achieved." Obviously, he is unaware of the 3.93 P.P.M. of NO_2 in Los Angeles air 24 hours per day (Exhibit 12). If miners can't live in toxic oxides of nitrogen for 8 hours per day, how can children in cities do it for 24 hours per day? Detoxifying all of the diesel exhaust in our cities, or outlawing diesel power in our cities as the Communists do, is the only way to restore our cities' air as it was before the advent of the General Motors diesel bus in our cities (Exhibit 13).

From my certified copy of Colorado Industrial Hygienist Jack Torrey's report (Exhibit 11), wherein he testified that from his analysis of the Idarado mine air the Idarado mine air contained from three to five times tolerance of oxides of nitrogen, and from certified death certificates contained in Exhibit 6 proving that he was right, I decided to expose General Motors, who also had a copy of the same report (Exhibit 11) in 1951, but used it to hide this deadly constituent (anhydrous nitric acid gas) inherent in their diesel bus exhaust (Exhibit 9) from the public by corrupting doctors, public health officials, and pseudo-scientists as disclosed in Exhibits 6, 7, 23, and 16,

being letters to Polomba, Scientific American, Governor Ed C. Johnson, and Mrs. Jack Foster.

This group, knowing that General Motors controlled the press, were not fearful of being exposed, indicted every aspect of combustion by the public in cities as being the cause of the toxic, deadly, anhydrous nitric acid air pollution and smog (Exhibit 12) being created, with impurity, by General Motors diesel bus engines in our cities. In addition, their lobbyists induced our academic Congress to appropriate millions to look for the cause of the air pollution brought to our cities, with their full knowledge, by General Motors diesel buses and railroad locomotives (Exhibits 10, 11, and 12).

I bought a 10-horsepower Wisconsin gasoline engine, and for one hour the exhaust was run into Exhibit "59" and *no acid* was created in the conditioner water—it remained neutral. This engine also had the fumes from the oil filler plug connected to the carburetor, therefore the gasoline engine exhaust contained all of the supposedly deleterious gases from the public's gasoline automobile engine that General Motors' pseudo-scientists, in phony articles, said was coming from their autos, and this test shows there was none. The same conditioner recovered, and, when calcite was added, detoxified the 0.1% of toxic anhydrous nitric acid gas inherent in all diesel exhaust and absent from gasoline automobile exhaust.

Exhibit 20 shows that I had made arrangements with a competent chemist to prove to the Court in my forthcoming trial that diesel exhaust was laden with toxic nitric acid gas and that my method patent detoxified this toxic

gas inherent in diesel exhaust. My lawyers refused to permit me to make this complete physical and chemical demonstration of Exhibit "59" to the Denver Court.

My attorneys, Ed Geer, Bruce Ownbey, and David Manter, conspired to prevent me from making the demonstration of my method patent No. 2,611,680, which discloses how this nitric acid gas is absorbed from diesel exhaust and then detoxified. Exhibits 3, 4, and 5 are, respectively, exhibits explaining the circulation, the absorption, neutralization of the acid principle to Judge Druffel; the exact copy of the Court Reporter's notes of the test; and the graph (Exhibit 5) depicting the test step-by-step on a chart; and, last, a picture (Exhibit 14) of Cincinnati Exhibit "S," the machine in which the test was conducted before Judge Druffel.

Judge Druffel held this patent valid September 18, 1959 (Exhibit 2), and it is valid in every state except Colorado; Judge Christenson held it invalid in Colorado October 18, 1963, and this was because I was not permitted by my attorneys to make the same physical and chemical presentation of Exhibit "59," exemplifying the chemical method of my patent No. 2,611,680 (Exhibit 1) to Judge Christenson in the Tenth Circuit that I made before Judge Druffel of the Sixth Circuit in Cincinnati.

We are spending billions to fight aggression in Viet Nam. What aggression on humanity could be worse than General Motors selling diesel buses that Exhibit "59" would show are polluting our cities' air with anhydrous nitric acid gas, the effects of which doctors recognize as lung-heart disease and say is destroying our health, and

by chicanery and control of the press General Motors is placing their diesel bus air pollution debacle on the shoulders of the public. What is worse, these pseudo-scientists, on high salaries paid by the public, are making an enigma out of the nitric acid diesel exhaust air pollution from G.M. diesel buses, and have the public spending billions of public money looking for what they are knowingly hiding for General Motors (Exhibits 6 and 7). Colorado Industrial Hygienist Jacoe refuses to analyze and report the toxic oxides of nitrogen in General Motors diesel bus exhaust on the Denver streets.

These two tests I suggested to be demonstrated to the Court would show the untold numbers of diesel buses to be discharging tons of toxic nitric acid gas each day in our cities' air, which could be detoxified, and would show that the public's gasoline autos are innocent.

The conclusion would be that it is the deadly anhydrous nitric acid gas inherent in diesel exhaust which since the advent of the diesel bus permeates our city air, and not cigarette smoking, which causes the 400% rise in emphysema and lung cancer in our cities; it is, rather the 3.93 P.P.M. of oxides of nitrogen inhaled with the cigarette smoke (Exhibit 12).

My lawyers unquestionably sacrificed 30% of $8 million, the amount Blue River saved by using diesel instead of electric haulage (Exhibit 18), when they refused to permit me to demonstrate Exhibit "59" to validate my patent. They sacrificed the public's health when they refused to permit me to show that it was the anhydrous nitric acid gas in General Motors diesel engines in city transit service, and not the public's gasoline autos, that engendered

the toxic air pollution we are now, by General Motors' control of the press, forced to live with. Thirty per cent of $8 million is $2,400,000. What would General Motors pay to keep the public ignorant of the fact that it is nitric acid in their diesel exhaust, and not the cigarettes the public smoke or the autos they drive, which has brought this air pollution debacle to our cities?

More important than a war to guarantee the Vietnamese the right to vote is the U. S. public's right to know where the toxicity in our cities' air comes from that elicited this hopeless, pathetic editorial in the New York Times: "Even the layman can draw one basic conclusion: The air we breathe is killing us." The United States Supreme Court can by Exhibit "59" inform the U. S. public that the diesel engines in city transit service are polluting our cities' air each day with tons of anhydrous nitric acid gas.

In the history of man it has been a simple truth that corruption ends when action by an aroused citizenry begins.

The United States Supreme Court can correct this miscarriage of justice.

Statutes Involved

I feel that this writ will force the disclosure of a public health hazard from diesel exhaust that is hidden from the public by my attorneys' refusal to permit me to make the same demonstration of my chemical method patent to Judge Christenson in the Tenth Circuit at Denver, who

held my patent invalid, as was made before Judge Druffel in the Sixth Circuit, who held the same patent valid. By this impasse, my constitutional right to a fair trial under Article V of our Constitution was violated, and I was not accorded due process of law.

Statement

I did not appeal from Judge Christenson's decision of October 18, 1964, because the Tenth Circuit Court of Appeals would not have before it the evidence of Exhibit "59" which Judge Druffel, in Cincinnati, had before him when he held my patent was valid.

I felt that I had a case against Utah Construction and Mining Company, who made the $8 million excavation for NORAD in Cheyenne Mountain, who by interrogatories had admitted infringement; and that in suit against them I would be able to demonstrate my Exhibit "59." However, this case was dropped when Judge Christenson held my patent invalid, because my attorneys claimed I had signed in Mr. Geer's office a stipulation that I would not pursue this case if I lost my case against Blue River Constructors. I misplaced, but recently found, the *agreement* (Exhibit 15) that I maintained I had signed in Mr. Ed Geer's office five days before the trial against Blue River Constructors. This was an agreement between my lawyers and me, and not a stipulation to drop the case against Utah Construction and Mining Company, Civil Action No. 7899. This agreement (Exhibit 15) is prima facie evidence that my attorneys had a 30% interest in all moneys recovered for damages and infringement of my patent No. 2,611,680.

DIESEL HAULAGE IS 60% MORE EFFICIENT UNDERGROUND THAN ELECTRIC HAULAGE. Based on using 23,000 volts for long distance power transmission, with transformers every few miles to cut the voltage to 440 volts which was the permissible voltage and that required by the mine trolley locomotive that was to furnish haulage for the 23-mile Denver Water Board tunnel, Morrison-Knutson and Peter Kiewit bid $41 million to drive the 23-mile Denver Water Board tunnel.

Blue River Constructors, composed of several multi-million dollar contracting firms, bid $33 million, because their superintendent, Ted Adams, was in the same area when in 1951 my diesel exhaust gas conditioner on diesel mine locomotives increased the tunnel footage driven using electric mine locomotives, from 24 feet to 48 feet in a 24-hour work day. This amounted to an increase of 57% in one day's footage driven with the same crew (Exhibit 19). It costs over $1,000 per day to pay a tunnel crew.

In 1953 the U. S. Bureau of Mines purchased a duplicate of the mine locomotives I had sold to the U. S. Steel Corporation for use in its Tennessee zinc mines. From their tests they claimed that my limestone conditioner did not take out the .1% of toxic oxides of nitrogen from diesel engine exhaust. If this was true, obviously my patent was invalid for lack of utility. However, they found by analysis and kept secret from me that my method detoxified the toxic oxides of nitrogen, NO_2, in diesel exhaust to non-toxic oxides of nitrogen, $Ca(NO_3)_2$, but did not take them out of the exhaust.

The U. S. Bureau of Mines, Safety Division, after tests in their Pittsburgh laboratory, refused in 1953 to approve for me my diesel exhaust gas conditioning method

for use underground, but they approved a Chinese copy of my method patent to be used by Blue River Constructors on fourteen Plymouth diesel locomotives they purchased in 1957 for use in the 23-mile Denver Water Board tunnel.

The Blue River group of six multi-million dollar contractors who saved $8 million in driving the 23-mile tunnel for the Denver Water Board using Plymouth diesel locomotives with my limestone conditioners approved by the U. S. Bureau of Mines, against the $41 million bid of Morrison-Knutson, et al, using electric mine locomotive haulage, were guilty in 1957 of willful infringement, aided and abetted by the U. S. Bureau of Mines, which said my patent was invalid for lack of utility because it did not take out the oxides of nitrogen, and hoped by their testimony to get my patent held invalid in the forthcoming trial before Judge Druffel in 1959.

Now, my three lawyers, with a 30% interest (Exhibit 15) in the $8 million damages which I felt an accounting would show if my patent should be held valid in this, the Tenth Circuit, refused to permit me to make the same demonstration of my Exhibit "59," disclosing the detoxification of diesel exhaust, which evidence was uncontradicted by cross examination and unanticipated by the cited prior art in the Sixth Circuit, and in the Tenth Circuit Exhibit "59" would have sustained its validity and would also have refuted any claimed anticipation, had they permitted me to demonstrate Exhibit "59" in its entirety to the Court as I had done in Cincinnati.

I appealed the Utah Construction Company case, No. 7899, and Chief Judge Murrah said to me, "Mr. Ruth, we want to help you. You are in the wrong court. You see, we have no Court Reporter here; we do not swear wit-

nesses; we do not take testimony. You get a lawyer and go back to the District Court."

Again, I went to three lawyers who in turn refused to take the case, the same as the first set refused, because, they said, it was the prerogative of lawyers to decide what evidence was to be presented to the courts. If this holds, lawyers can usurp the prerogative of judges.

I felt that my lawyers had no right to withhold the evidence of Exhibit "59" which Judge Druffel witnessed and from which he held my patent valid in the Sixth Circuit, from Judge Christenson who in the Tenth Circuit *was permitted to see only the mechanical patent* the validity of which Judge Druffel ruled I had not sustained (Exhibit 2). By withholding this demonstration of my Exhibit "59," my constitutional right to a fair trial by due process of law was denied me by my lawyers, and I decided to present the case myself, to the best of my ability, in the interest of humanity, by exposing the nitric acid in diesel bus exhaust that my lawyers, in effect, were hiding from the court and the public.

Reasons For Granting This Writ

The District Court in Cincinnati held my patent No. 2,611,680 valid after witnessing Exhibit "59." At the outset, this demonstration in Cincinnati was to be run in a 10-horsepower replica of my large commercial conditioner (Exhibit "59") but with a glass side. The unit was connected to the exhaust of a 10-horsepower diesel engine. My Exhibit "60" was made the same size as my Exhibit "59" with glass sides, from the drawing the Eagle-Picher

Company gave me of its scrubber, designated as their Exhibit "S," at the trial in Cincinnati, which I contended infringed my patent No. 2,611,680.

Eagle-Picher's counsel insisted I must demonstrate infringement of my method patent in their Exhibit "S," which was my Exhibit "60," the herein Exhibit 14. Accordingly, I disconnected from my Exhibit "59" the exhaust pipe from the 10-horsepower diesel engine and connected it to their Exhibit "S" and my Exhibit "60." Consequently, thenceforth, my Exhibit "59" was demonstrated in their Exhibit "S," and it is so noted by the Reporter, whose transcript (Exhibit 4) states as follows:

> Exhibit "S"—Model of defs. machine (2) connecter diesel Ex to Ex "S."
>
> 08.00—the test was started at 8:00 A.M. The water was saturated with the nitric acid from the diesel exhaust to pH 2.65 at 08.38.
>
> Took sample of water from Ex "S" and took pH reading—reading 2.65.

At pH 2.65 the conditioner water was saturated with nitric acid gas—*the water could absorb no more nitric acid gas from the diesel exhaust.* At this point, the nitric acid gas in the diesel exhaust went out as an acid water vapor as fast as it came in. Exhibit 4 continues:

> At 8.46 put calcite in Ex "S" without removing water and while Ex "S" is continued to be operated—took movie scenes of insertion of calcite through outlet of Ex "S."
>
> 09.32—Took sample of water from Ex "S"—took pH reading—reading 6.2—cleaned electrodes.

The calcite revivified the water's ability to again absorb toxic nitric acid gas from diesel exhaust, by converting the chemically soluble toxic nitric acid gas in the conditioner water to non-toxic calcium nitrate, $Ca(NO_3)_2 + 4\ H_20$.

The following quotation from page 13 of Judge Christenson's decision shows how the absence of the above demonstration of Exhibit "59" affected his decision:

> There was evidence from a chemical engineer, Dr. Gary, tending to establish that the removal of such constituents can be better accomplished with a chemically inert, rather than an alkaline, diffusing medium such as limestone (or calcite). The test upon which the conclusion of defendants' expert was based, however, was over a short period of time and involved old equipment the efficiency of which was in question. Dr. Gary was asked what he understood the Ruth patent in suit to teach regarding the removal of acid constituents. He replied, "Nothing." It was not until the question was rephrased to ask him, "What does the patent purport to teach with regard to the removal of acidic [sic] constituents?" that he replied, "that by using an alkaline medium, a higher percentage of the acidic constituents would be removed." Dr. Gary then further indicated that this was not true in fact and that in the context of the patent it was not according to accepted chemical theory.

Exhibit "59" would have blasted this dialogue.

Had my attorneys permitted me to demonstrate Exhibit "59" to Judge Christenson in Eagle-Picher's Ex-

hibit "S," as I did to Judge Druffel, he would have known:

1. Diesel exhaust was laden with nitric acid gas; and the public, as well as the Judge, would have known that diesel combustion engenders toxic nitric acid gas in their cities.

2. The conditioner chemically absorbs diesel exhaust nitric acid gas to the saturation point in water; this saturation amounts to pH 2.65, and thereafter the water can absorb no more NO_2 from the diesel engine exhaust.

3. To the pH 2.65 saturated nitric acid water in the conditioner was added an alkaline medium identical chemically to limestone (calcite); this revivified the conditioner water, and the nitric acid gas now coming in with the diesel exhaust was again being absorbed, as indicated by the higher pH 3.1; this incoming nitric acid gas, together with the prior 2.65 saturation of nitric acid gas in the conditioner water was gradually neutralized up to pH 6.2. (Expert Gary did not know how this method detoxified diesel exhaust, in the absence of Exhibit 5, depicting Exhibit "59.")

The calcite revivified the water's ability after saturation to again absorb the nitric acid from the diesel engine exhaust. This is the invention. Without limestone, or calcite, the saturated nitric acid as acid water vapor would go out as a nitric acid water vapor as fast as it came in with the diesel exhaust. By thus revivifying the water with an alkaline medium, the soluble acid was at the same time converted to the neutral non-toxic salt, $Ca(NO_3)_2$ +

4 H_2O, thereby detoxifying the diesel exhaust as fast as the conditioner water absorbed the nitric acid gas.

This, Dr. Gary says, "was not according to accepted chemical theory." This is not true, but by my lawyers' preventing me from running Exhibit "59" I had no way in the record to prove it, and nothing on which to base an appeal.

It appears to me that my lawyers, by preventing me from demonstrating Exhibit "59," have made it possible for the respondents surreptitiously to hide from the court and from the public the tons of synthetic toxic anhydrous nitric acid gas (NO_2) discharged daily into city air by General Motors railroad diesel locomotives and their diesel buses used in city transit service.

I studied civics in school, and I was taught that corporations were formed by groups of people whose combined resources created something that would manifestly benefit all of the people, which as individuals alone they could not accomplish. For their altruistic investment, they get a dividend. Now in the United States we have a corporation that reverses this precept. General Motors found out in April of 1951 that deaths in the Idarado mine were caused in the three years past by the toxic oxides of nitrogen from their diesel engine exhaust. This report (Exhibit 11), made in April, 1951, by Jack Torrey, of the Colorado Department of Public Health, on cross examination, page 12 of his report, admits the miners were permitted to work and die in air containing from three to five times tolerance of oxides of nitrogen (NO_2), anhydrous nitric acid gas. With this knowledge, Dr. Cleere,

head of the Colorado Department of Public Health (Exhibit 23), was duty-bound to shut down the Idarado mine in 1951. This would have notified the State of Colorado and the State of California where Los Angeles was displacing its electric street cars with General Motors diesel buses, that diesel exhaust was laden with a unique, toxic, smog-forming nitric acid gas, called oxides of nitrogen. This would also have notified public health departments throughout the United States, and the use of diesel power in city transit service would have been ostracized. Jack Torrey testified the miners (those who did not quit in 10 days) had for years worked in mine air five times tolerance of oxides of nitrogen, but none of the 14 cases before the Colorado Industrial Commission were compensated, nor were those who died outside the mine from oxides of nitrogen, emphysema caused by breathing the low concentrations of oxides of nitrogen in the mine over an extended period. See page 5, Exhibit 16, and the report of postmortem of Irving J. Ivie, Exhibit 17. Dr. Good testified the labor turnover was great, or more would have died.

In Los Angeles, in 1952, when the General Motors diesel buses were displacing the electric street cars, the same toxic, blinding smog beset that city. See C. L. Hamblin letter of 8/12/60, Exhibit 6. Jack Torrey, the only man with first-hand *analytical* knowledge that General Motors 6-71 diesel bus engines engendered in the Idarado mine toxic anhydrous nitric acid and blinding smog, went out to Los Angeles for two years, apparently not to warn the public about the toxic, smog-forming oxides of nitrogen inherent in General Motors diesel bus engine exhaust, because the press releases by scientists and health officials in California and Los Angeles from that time on attributed the cause of this new smog to inversion, to

the gasoline fumes that came out of a gasoline truck when it was again filled with gasoline, to olefins, to auto exhaust, ozone, trashburners, and cigarettes. You will note that the press is silent about the 0.1% of toxic oxides of nitrogen inherent in General Motors diesel bus exhaust; a diesel bus in a day's operation will discharge 50 pounds of this toxic gas in its exhaust into a city's air (this is proven by Exhibit "59"). It is obvious that Jack Torrey went out to California to corrupt public health officials and scientists and tell them what to hide, which is obviously the oxides of nitrogen and smog engendered from General Motors diesel bus engines in Los Angeles as it was in the Idarado mine.

Here we have a corporation organized to make money by the sale of diesel power in city transit service and which destroys the public's health, buncos them out of their money, and by phony press releases makes an enigma out of diesel smog, costing our unwary public billions of dollars for the witch hunt set up by General Motors public relations to hunt for the cause of the smog damage.

The United States Supreme Court can, by ordering Exhibit "59" demonstrated to the District Court in the Tenth Circuit, subject to scrutiny and cross examination, as it was demonstrated in the Sixth Circuit, disclose to the court and to the public that one-tenth of one per cent of diesel exhaust is toxic, smog-forming, anhydrous nitric acid gas; that this gas is unique to diesel engine combustion and is not present in gasoline automobile combustion; and that the nitric acid gas in diesel exhaust is 20 times more toxic than carbon monoxide in automobile exhaust

(Exhibit 10). With this knowledge, which the United States press must follow as it comes from a Federal Court, an enlightened public will eradicate this phase of deadly air pollution, which is substantially responsible for the 400% rise in emphysema, lung cancer, and bronchial ailments in children.

In the U. S. Bureau of Mines Information Circular Bulletin I.C. 7222 dated in 1942 (Exhibit 16) is the following statement about oxides of nitrogen in diesel engine exhaust:

> The controlling noxious gases are nitrogen oxides, which, under currently accepted tolerance limits, are 10 times more deadly than carbon monoxide.
>
> Although acute poisoning from toxic gases may be fatal, nevertheless the most important hygienic risk from any poisonous substance is that which results from constant and repeated exposure.

Exhibit 9 shows G.M. diesel 6-71 exhaust to contain 954 parts per million of oxides of nitrogen. Exhibit 12 shows Los Angeles air to contain 3.93 P.P.M. of oxides of nitrogen.

With the knowledge of the death and destruction wrought in the Idarado mine from 1947 to 1952 by the oxides of nitrogen in diesel exhaust which confirmed their findings about diesel exhaust in their I.C. 7222 Bulletin in 1942, they testified and permitted General Motors to put in their diesel bus sales manual the following (Exhibit 6):

The report of the Bureau of Mines on the GM diesel exhaust definitely shows that there is [sic] no harmful parts in same. The excerpt of testimony before Illinois Commerce Commission is very clearcut and factual. Both of these copies have been sent to the field and if more copies are needed they are available.

With this knowledge, in 1955 I deprecated the displacement of our electric coaches in Denver by General Motors diesel buses. I notified the City Council, the Mayor, the Colorado Public Utilities Commission, and the Governor, and was thwarted by Dr. Cleere (Exhibit 23).

I then turned over all of my data on the toxicity of diesel exhaust to the United States Federal Trade Commission by which they could prove General Motors was practicing deception in selling their diesel buses by misrepresentation, by advertising and promoting the sale of their diesel buses on the basis that there were no harmful parts in their diesel buses' exhaust when they knew their diesel bus exhaust contained one-tenth of one per cent (954 P.P.M.) of toxic, smog-forming, anhydrous nitric acid gas (oxides of nitrogen). The U. S. Bureau of Mines R. I. Report 4032 of January 1947 shows that diesel exhaust contains 996 P.P.M. of NO_2.

I went to Washington and put the facts to Samuel L. Williams, chief prosecuting attorney for the United States Federal Trade Commission. He said, "All very well; if we filed a suit against General Motors, and the U. S. Bureau of Mines testified that there are no harmful parts in their diesel bus exhaust, it would collapse."

After two years of successful operation of my diesel mine locomotive in a Wyoming mine from 1942 to 1944, I

presented this data to the Colorado Commissioner of Mines, Fred Jones, and obtained permission for the Idarado Mining Company to use *one* diesel mine locomotive (Exhibit 24), which they operated safely from 1944 to 1947, when the U. S. Bureau of Mines sent a letter (Exhibit 25) to the Idarado Mining Company which they interpreted as permission to put in four more diesel mine locomotives over the head of Fred Jones, Colorado Commissioner of Mines, without my conditioners, by-passing the permission granted by Fred Jones in 1944 (Exhibit 24) for one diesel locomotive, with *disastrous results*. All this time, the U. S. Bureau of Mines maintained there were no harmful parts in General Motors diesel bus exhaust, so that General Motors diesel bus sales in our cities would not be impaired (Exhibit 22).

In 1953 the U. S. Bureau of Mines ordered one of my $9,000, 3-ton diesel mine locomotives, specifying that it be a duplicate of the six standard 3-ton diesel mine locomotives with limestone detoxifying conditioners I had sold to the U. S. Steel zinc mine in Jefferson City, Tennessee (Exhibit 10). I put up $400 for them to make tests and analyses of the exhaust, leading to their approval which they refused.

After seven months they found the answer to the quandary, why the U. S. Steel zinc mine air had less than 5 P.P.M. of oxides of nitrogen, whereas the Idarado mine air had over 100 P.P.M., when their colormetric method of analysis for the oxides of nitrogen from the exhaust of the diesel engine showed the same amount of oxides of nitrogen coming out of my conditioner with limestone as came out of a water-only Idarado scrubber which was

made from a drawing recommended by the U. S. Bureau of Mines.

My conditioner exhaust contained the same amount of oxides of nitrogen as $Ca(NO_3)_2 + 4\ H_2O$ as the diesel engine exhaust, *but their colormetric analysis could not distinguish the toxic oxides of nitrogen* (NO_2) *coming out of the diesel engine exhaust from the non-toxic oxides of nitrogen, calcium nitrate with four molecules of water of crystallization*—$Ca(NO_3)_2 + 4\ H_2O$—*which at* 100° *F., the temperature of the conditioner water, had the same vapor pressure as the water and therefore the detoxified oxides of nitrogen were exhausted out of the conditioner as vapor with the water vapor.*

Having put up $400, I expected, but they refused to give me any of the analytical results made in their Pittsburgs laboratory, hoping to use it to defeat my patent.

When Mr. James, head of the U. S. Bureau of Mines Pittsburgh testing laboratory, testified before Judge Druffel that test after test of my limestone conditioner showed that it did not take out the toxic oxides of nitrogen, as he stepped from the stand Judge Druffel, wise in the wiles of witnesses, asked him, "Did the U. S. Bureau of Mines ever approve a diesel mine locomotive with a limestone conditioner for use underground?" Mr. James answered, "Yes." Judge Druffel asked, "How many?" Mr. James replied, for two companies—Plymouth Locomotive Works and Gitman Brothers.

In 1953, after testing my unit, they refused me their approval. In 1956, using the same method, they granted approval to by competitors.

A letter from Congressman Powell (Exhibit 21) exposes this perfidy of usurped authority by the U. S. Bureau of Mines in stating they had no statutory right to aid and assist General Motors in buncoing the public out of their health and their money and me out of my patent, and stating: "I do know, however, that the Bureau of Mines never has had and does not now have any authority conferred by Federal statute to inspect mines other than coal mines nor to approve or disapprove the use of equipment in those mines."

Conclusion

Time is of the essence. I note in the proceedings before our Federal courts that Sam Sheppard was not forced to abide by the judgment of a ten-year-old decision in which this honorable Court decided he had not received a fair trial.

I plead that this honorable Court not consider the intervening time in this case, and that I be granted the right to a fair trial and given the right to demonstrate Exhibit "59" to a judge in the Tenth Circuit as I did in the Sixth Circuit.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

JOSEPH P. RUTH, Respondent, Pro Se
1325 Glenarm Street
Denver, Colorado

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
AUG 17 1966
JOHN F. DAVIS, CLERK

APPENDIX

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

JOSEPH P. RUTH, Respondent, Pro Se
1325 Glenarm Street
Denver, Colorado

Messrs. Oberlin, Maky & Donnelly
1405 East Sixth Street
Cleveland, Ohio
Malcolm E. MacDougall, Esq.
144 West Colfax Avenue
Denver, Colorado
Charles D. Bromley, Esq.
330 Majestic Building
Denver, Colorado
Counsel of Record for Respondents.

July 29, 1966

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

Appendix A

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO

No. 8698

JOSEPH P. RUTH, an individual, **Plaintiff,**

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, **Defendants.**

CITY AND COUNTY OF DENVER, a municipal corporation, acting by and through its BOARD OF WATER COMMISSIONERS, **Third Party Plaintiff.**

vs.

FIREMAN'S FUND INSURANCE COMPANY and the AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants.**

MEMORANDUM DECISION DENYING MOTION FOR NEW TRIAL

On February 8, 1966, the plaintiff, appearing pro se, filed a motion for new trial supported by an extensive brief.

The record discloses that on October 18, 1963, I filed a memorandum decision, containing findings of fact and conclusions of law summarized on the last page of the decision as follows:

"It is concluded that claims 1-6 of the patent in suit were anticipated by the prior art including prior public uses; and that any differences existing between such prior art and subject matter of the patent would have been obvious to a person having ordinary skill in such art. The patented claims, therefore, are not believed to achieve the standard of patentability established by the provisions of 35 U.S.C.A. § 101-103."

Pursuant to the direction of the court the Clerk on October 18, 1963, entered judgment in favor of the defendants and against the plaintiff that the plaintiff take nothing on his complaint, no costs taxed.

On October 28, 1963, counsel for the plaintiff filed a motion for a new trial which was denied by the court in its order filed November 15, 1963.

On December 27, 1963, the plaintiff filed a letter in which he accused attorneys of improperly representing him, withdrew the request for appeal and urged that the decision be set aside by this court as being based on false testimony. In ruling upon that letter I stated:

"It is not clear whether the letter is intended as a motion for relief under Rule 59 or under Rule 60 of the Federal Rules of Civil Procedure. However, in the interest of an expeditious decision so that plaintiff if he desires a review will not abandon an appeal on the supposition that this court should or can set aside the judgment herein on the basis of his letter, I shall treat the letter both as a motion for new trial under Rule 59 and a motion for relief from the judgment under Rule 60.

"As so considered, I have carefully reviewed the letter in question and its enclosures. While there are general conclusions and charges made, there are no allegations of fact which would justify the setting aside of the judgment. The taking of the depositions complained of by the plaintiff out of his presence was not unusual, there were several other more important foundations for the decision and the plaintiff's position indicated in the letter, aside from the present charge against his counsel, was fully presented at the trial. As far as the court was able to observe, plaintiff's counsel represented him vigorously and ably. While the result manifestly has been disappointing to both the plaintiff and his counsel, the validity of the decision depends largely upon basic problems of patent law which should either be deemed controlling upon the present judgment or reviewed on appeal in the manner provided by law.

"Accordingly, it is believed that the court has no alternative but to deny the motions or request to set aside the judgment and it is so ordered."

On January 8, 1964, the court extended the time for the filing and docketing of the record on appeal to the 14th of February, 1964.

On February 11, 1964, a stipulation was filed, based upon the request of the plaintiff, that the appeal "be voluntarily dismissed and that the cost bond of the plaintiff be discharged". Based upon that stipulation Judge Chilson entered an order dismissing the appeal as the voluntary act of the plaintiff and ordering that the cost bond theretofore posted by the plaintiff be discharged and the surety exhonerated.

On March 19, 1964, counsel of record for the plaintiff filed notice of withdrawal as counsel. Apparently no order based upon that notice was entered.

It will thus be seen that not only has the statutory time for filing a motion for new trial expired, but a motion for new trial has heretofore already been denied and relief on the grounds sought here has been denied long since.

There is nothing now presented which would afford the court jurisdiction, nor which would justify the exercise of any discretion it might have to reopen the judgment entered in 1963.

Accordingly, whether the plaintiff's motion is considered as a motion for new trial or for relief under Rule 59 or under Rule 60 of the Federal Rules of Civil Procedure, it must be, and it is hereby, denied.

Dated this 7th day of February, 1966.

A. Sherman Christensen
United States District Judge
(Assigned)

A copy of the foregoing was mailed to following counsel of record this 7th day of February, 1966:

Ownbey, Manter & Lippman and
Edward O. Geer
Attorneys at Law
251 Clayton Street
Denver, Colorado 80206

Oberlin, Maky & Donnelly
Attorneys at Law
1405 East Sixth Street
Cleveland, Ohio

Charles D. Bromley, Esquire
Attorney at Law
Majestic Building
Denver, Colorado 80202

Eugene P. Helfer, Esquire
Attorney at Law
Denver, Colorado

Joseph P. Ruth
1325 Glenarm Place
Denver, Colorado 80202

Darla Phillips
Secretary to Judge Christensen

Appendix B

IN THE UNITED STATES COURT OF APPEALS FOR THE TENTH JUDICIAL CIRCUIT SITTING AT DENVER, COLORADO

TENTH DAY, MAY TERM, WEDNESDAY, JUNE 1st, 1966

No. 6679

JOSEPH P. RUTH, **Appellant**

8698 vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS, CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, FIREMAN'S FUND INSURANCE COMPANY and the AETNA CASUALTY AND SURETY COMPANY,

Appellees.

Appeal from the United States District Court for the District of Colorado.

PRESENT: Honorable Orie L. Phillips, Circuit Judge, and other officers as noted on the 31st day of May, 1966.

Before Honorable Delmas C. Hill and Honorable Oliver Seth, Circuit Judges.

This cause came on to be heard on motion of appellees to dismiss the appeal on the ground that the appeal is taken from the denial of a motion which was filed out of time.

On consideration whereof, it is now here ordered that said motion be and the same is hereby granted and the appeal be and the same is hereby dismissed out of this court.

A true copy as of record,

TESTE:

ROBERT B. CARTWRIGHT, *Clerk,*

By William L. Whittaker
Chief Deputy Clerk

Entered on the Docket August 1, 1966. G. Walter Bowman, Clerk, by Audrey Boreing, Deputy Clerk.

Received August 17, 1966, Office of the Clerk, Supreme Court, U.S.

Office-Supreme Court, U.S.
FILED
SEP 16 1966
JOHN F. DAVIS, CLERK

In the Supreme Court of the United States

No. 453.
OCTOBER TERM, 1966.

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, Third Party Defendants,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

CHARLES R. AULT,
JOHN H. WILHARM, JR.,
1050 Union Commerce Building,
Cleveland, Ohio 44115,
Counsel for Respondents.

September 16, 1966.

THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—PHONE: 621-5647

TABLE OF CONTENTS.

Opinions Below	1
Jurisdiction	2
Questions Presented	2
Statutes and Regulations Involved	2
Statement	2
Argument	4

Statutes and Rules.

Federal Rules of Civil Procedure:	
Rule 59	2, 3, 4, 5
Rule 60	2, 3, 4, 5
Rule 73(b)	3
Revised Rules, U. S. Supreme Court, Rule 19(b)	2, 5
Rule 22 of the Court of Appeals for the Tenth Circuit	2, 3
28 U. S. C. 1254(1)	2

In the Supreme Court of the United States

No. 453.

OCTOBER TERM, 1966.

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVERS CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, Third Party Defendants,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinions are as follows:

Memorandum Decision of District Court filed October 18, 1963 (R. (D. C.) 6).*

* All references to the record will be (R. (D. C.) __) for Transcript of Record of District Court and (R. (Ct. App.) __) for the Transcript of Record of the Circuit Court of Appeals in the 10th Circuit.

Order of District Court entered December 31, 1963 (R. (D. C.) 42).

Order dismissing appeal as a voluntary act of plaintiff and stipulation (R. (D. C.) 48).

Memorandum Decision Denying Motion for New Trial (R. (D. C.) 105).

Order of Dismissal of June 1, 1966 (R. (Ct. App.) 15).

Order Denying Rehearing of June 14, 1966 (R. (Ct. App.) 22).

JURISDICTION.

Petitioner relies upon 28 U. S. C. Section 1254(1) as his authority and further, we assume, upon Rule 19(b), Revised Rules, Supreme Court.

QUESTIONS PRESENTED.

Petitioner does not present any question in his Petition.

To Respondents, two questions are apparent: (1) Is there a justiciable matter before this Court? (2) Did the Circuit Court of Appeals err in granting appellees Motion to Dismiss under Rule 22 of the Court of Appeals for the Tenth Circuit, or in refusing to grant a rehearing some two weeks later?

STATUTES AND REGULATIONS INVOLVED.

Respondents believe that if Petitioner is entitled to relief he must prevail under Rules 59 or 60, Fed. R. Civ. P.

STATEMENT.

This litigation was commenced by Petitioner on January 21, 1960 in the District Court for the District of Colorado (Case No. 6679, Civil). Petitioner alleged infringement of a certain patent and sought relief against the defendants in the form of an injunction and damages. The case was tried to the court in the spring of 1963 and a

memorandum decision in favor of defendants was written by District Court Judge A. Sherman Christensen and filed on October 18, 1963 (R. (D. C.) 6-28). In outline form the material proceedings following the District Court decision have been:

1. Motion for a new trial filed by plaintiff-petitioner Oct. 28, 1963 (R. (D. C.) 30).
2. Order denying Motion for new trial Nov. 15, 1963 (R. (D. C.) 33).
3. Notice of appeal under Rule 73(b) to Court of Appeals filed December 5, 1963 (R. (D. C.) 35).
4. Order of District Court denying relief under Rules 59 and 60, Fed. R. Civ. P., filed Dec. 31, 1963 (R. (D. C.) 42).
5. Order dismissing appeal as a voluntary act of plaintiff and Stipulation to that effect filed Feb. 11, 1964 (R. (D. C.) 48).
6. Motion for new trial filed in District Court by defendant Ruth on Jan. 31, 1966 (R. (D. C.) 49).
7. Memorandum decision denying Motion for new trial filed Feb. 8, 1966 (R. (D. C.) 105).
8. Notice of appeal and Motion Requesting that Judge Christensen disqualify himself. Mar. 3, 1966 (R. (D. C.) 115).
9. Motion to Dismiss under Rule 22 of the Circuit Court of Appeals filed by appellees on April 21, 1966 (R. (Ct. App.) 4).
10. Order granting Motion of Appellees to dismiss filed June 1, 1966 (R. (Ct. App.) 15).
11. Further request not to dismiss filed by appellant Ruth on June 6, 1966 and treated by the Court as an application for reconsideration (R. (Ct. App.) 16).
12. Order denying application to reconsider denied June 14, 1966 (R. (Ct. App.) 22).

After the order of June 14, 1966, Ruth filed his Petition for Writ of Certiorari on Aug. 17, 1966.

ARGUMENT.

The first question is whether there is a justiciable matter which could be brought before this Court by Petitioner Ruth. Petitioner agreed to dismissal of the case in the 10th Circuit in 1964, and an order and stipulation were entered to that effect (R. (D. C.) 48). Then Petitioner Ruth, in an effort to revive the case 23 months later, filed a motion for a new trial in the District Court which was correctly dismissed (R. (D. C.) 49, 105). The force and effect of Ruth's Petition to this Court depends upon the validity of the motion filed in 1966. Clearly, Ruth's motion was not filed within the time allowed by the Federal Rules of Civil Procedure. Rule 59(b) provides that motions for a new trial be served within 10 days of the entry of judgment; Rule 60(b) provides that for causes (1), (2) and (3) the motion must be filed not more than one year after judgment was entered. Petitioner Ruth has not indicated any reason for being granted relief under Sections (4), (5) or (6) of Rule 60(b). Thus, as Petitioner's motion for a new trial was not timely and there was no cause for delay, the action was defective on its face. Accordingly Petitioner's request for a Writ of Certiorari to this Court is an attempt to have a nullity reviewed by this Court and should be denied.

Further, the Petitioner voluntarily dismissed his appeal in 1964 from the order denying a motion for a new trial entered Nov. 15, 1963 (R. (D. C.) 35 and 48). This is essentially the same relief Ruth now seeks.

Petitioner Ruth has had his day in court and the Petition and record do not disclose any new evidence or facts which would entitle him to relief.

The second question is whether the Court of Appeals erred in granting appellees motion to dismiss in June, 1966?

Petitioner's bids for a new trial have been reviewed six times: (R. (D. C.) 33); (R. (D. C.) 42); (R. (D. C.) 48); (R. (D. C.) 105); (R. (Ct. App.) 15); (R. (Ct. App.) 16). There is no reason why Respondents should be put to further expense to provide Petitioner with a forum to publish his views about General Motors and buses on city streets. Ruth has consistently ignored that his basic claim is a patent infringement suit between parties. It is not a proceeding or hearing involving "the disclosure of a public health hazard from diesel exhaust" (Pet. p. 9). A review of the decisions of Judge Christensen and the orders of the 10th Circuit Court of Appeals indicate that the courts have been patient in their treatment of Ruth and liberal in their interpretation of his letters and pleadings. For example, the order of Judge Christensen filed December 31, 1963 indicates that he treated a letter to the Court as a motion for relief under Rule 59 or Rule 60, Fed. R. Civ. P. (R. (D. C.) 42). See also the Memorandum Decision Denying Motion for New Trial filed February 8, 1966 (App. A to Pet.). (There is an apparent error in the decision as reported in the appendix. In the first line it reads: "On Feb. 8, 1966,"—this should be January 31, 1966, see (R. (D. C.) 105).

Finally, Ruth at the outset of the Questions Presented Section of his Petition states that:

> "This writ, if granted, will force the disclosure of the hidden public health hazard resulting from the indiscriminate discharge of the 0.1% of toxic anhydrous nitric acid gas inherent in diesel bus exhaust (Exh. 9), which by industrial hygienists is rated 20 times more toxic than is carbon monoxide in gasoline automobile exhaust (Exhibit 10)."

The balance of the section continues along the same lines and fails to state any question that this Court could recognize under Revised Rule 19(b).

For the foregoing reasons, Respondents request that the Court not grant the Petition.

Respectfully submitted,

CHARLES R. AULT,
JOHN H. WILHARM, JR.,
1050 Union Commerce Building,
Cleveland, Ohio,
Counsel for Respondents.

September 16, 1966.

LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
OCT 4 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants,**
Respondents.

REPLY BRIEF OF PETITIONER

JOSEPH P. RUTH, **Respondent, Pro Se**
1325 Glenarm Street
Denver, Colorado

Messrs. Charles R. Ault, John H. Wilharm, Jr.,
1050 Union Commerce Building
Cleveland, Ohio 44115

Counsel of Record for Respondents.

October 3, 1966

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

INDEX

PAGE

Jurisdiction 4

CASE CITED:

Mineral Separation North American Corporation v. Magma Copper Company, 280 U.S. 400 3

CONSTITUTION:

Article 5 4

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff.

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants.**
Respondents.

REPLY BRIEF OF PETITIONER

When I found out Mr. G. A. (Bud) Franz was to be a witness for Mr. Donnelly, I gave Mr. Ownbey a copy of my certified copy of Jack Torrey's analysis of the Idarado mine air (Exhibit 11) in which Mr. Franz participated as the local Idarado mine inspector in the report as of April 19, 1951. I also gave him the certified death certificates of miners who had died as a result of the concentration of oxides of nitrogen in the mine which Mr. Torrey testified were five times tolerance. I also gave him the coroner's report on the death of Aiden Connors, who fell 200 feet down a raise without ladderways and landings every 20

feet as provided by Colorado mining law. Mr. Franz, now Commissioner of Mines, permitted the Idarado Mining Co. to construct this illegal raise in violation of the Colorado mining law. At the coroner's inquest he was asked by the coroner if he had anything to say and he said "I guess not." My attorney did not have him verify the Torrey report or cross-examine him. A miner overcome by diesel fumes falls down an illegal raise and he, responsible for the miners' safety, says nothing.

Big corporations can buy anything they want in Colorado. Franz watched miners struggle for breath and die from General Motors diesel exhaust for years and did nothing. I wanted my attorney to ask him why, when he had it in his police power to prevent, he did not prevent the miners from being injured from diesel exhaust five times tolerance.

The Industrial Commission is the worst thing that ever happened to labor. Three semi-permanent politicians can be bought off—whereas it is infinitely more difficult to buy off a transient viable jury of citizens. Abolish this counterfeit short cut to justice. The United States would not now be wallowing in a welter of toxic smog from General Motors diesel exhaust if Tony Amato, et al., had testified before a petty jury instead of an industrial commission.

No American should die fighting to foist our diseased democracy on another nation until this cancer is cut out of our otherwise venerable democracy.

This, together with my attorneys' refusal to permit me to demonstrate Exhibit 59 to the Court, convinced me my attorneys had defected to Mr. Donnelly and were dedi-

cated to the hiding of the deadly oxides of nitrogen inherent in diesel exhaust for General Motors as the Colorado Industrial Commission, et al., did.

At the pretrial demonstration it was decided by my attorneys not to demonstrate Exhibit 59, but I could blow up the graph of Exhibit 59 and with a pointer explain "59" to the Court from an easel. I was not given an opportunity to make this demonstration, and at the close, Saturday, Mr. Manter lifted this 18" x 24" exhibit mounted on cardboard from the easel and carried it from the court room. (Exhibit ~~23~~ 27.) At the outset Judge Christenson said he would stay over if necessary.

By my attorneys' decision, Judge Christenson did not witness and observe the chemical and physical demonstration of Exhibit "59" which absorbed the anhydrous nitric acid gas from the diesel exhaust and the limestone thereafter continually automatically detoxifying it.

Mr. Justice Holmes in *Mineral Separation North American Corporation v. Magma Copper Company,* 280 U.S. 400, says, "There is no 'of course' as to what nature can do except as proved by observation and experiment."

My attorneys denied me the right to give to the Court the opportunity to observe the chemical reactions that transpired in the functioning of my chemical patent method of making diesel exhaust nonhazardous and proving it to be the toxic nitric acid gas in the diesel exhaust by the classic diphenylamine method (Scott's Analysis, page 631).

Judge Druffel, in holding my patent valid, observed from Exhibit "59" what Mr. Justice Holmes said was

necessary in determining the function of a chemical patent. Judge Christenson did not make the same observation in holding my patent invalid, because this vital evidence was withheld from him by my attorneys. My right to a fair trial under Article 5 of the Constitution was denied me.

In regard to rules, this Court has jurisdiction under Rule 20 because this "is of such imperative public importance as to justify the deviation from normal appellate processes and to require immediate settlement in this Court." More than 15,000 Americans will die of emphysema this year. This is 8 fold over 10 years ago (Exhibit 26). It coincides with the introduction and increased use of diesel buses in city transit service (Exhibit 12, bottom). I can prove by Exhibit 59 that no other form of combustion other than the diesel engine and the electric furnace synthetically makes and discharges oxides of nitrogen into our cities' air. Exhibit 59 and Exhibit 9 will show 50 pounds of anhydrous nitric acid gas issues each normal 8-hour working day from every diesel bus in city transit service with a 6-71 G.M. diesel bus engine. Detoxifying this gas from every diesel bus sold in our cities since 1952 is the only way to get normal air, as of 1952, when L. A. air had less than 1 P.P.M. not 3.93 (Exhibit 12).

Tolerance, which is the power of enduring or resisting a poison, is set at 5 parts per million for an 8-hour exposure to oxides of nitrogen. The General Motors diesel bus engine under load puts out 954 P.P.M. Exhibit 9. A diesel bus under load with a 6-71 General Motors diesel engine puts out 2000 cubic feet of exhaust gas *per minute* (10 cubic feet for each output of one horsepower). To dilute one cubic foot of General Motors diesel bus exhaust gas containing 954 P.P.M. of nitrogen oxide down to the

5 P.P.M. tolerance requires that 954/5 - 1 = 190.8 - 1 = 189.8 cubic feet of fresh air (free from oxides of nitrogen) be mixed with the one cubic foot of diesel exhaust. To dilute the 2000 cubic feet of exhaust that issues from a diesel bus under load *each minute* requires 2000 x 189.8 or 379,789.8 cubic feet of fresh air *per minute*. Our cities have long since run out of such fresh air, thanks to the diesel engine.

When you consider the myriad of General Motors diesel buses in our cities and the 15,000-horsepower General Motors diesel railroad locomotives that are in and out of our cities every day, you can see why they are now, after reaping billions of profit from the sale of diesel power for use in our cities, laying onto the public the shortcomings of their diesel engines. General Motors is no doubt spending millions on TV and newspaper propaganda to hide their perfidy (Exhibit 26). Sandy Vanocher's September 18, 1966, one hour NBC TV broadcast on air pollution is such propaganda, as was the hour long broadcast on Columbia TV by Daniel Schoor.

Until all of the anhydrous nitric acid gas from diesel power in city transit service is detoxified, silent nitric acid death will stalk our streets. General Motors propaganda is inveigling the public to live with air pollution as a consequence of city life because they know if the public knew that their diesel power in city transit service creates 99.44% of the toxic air they would be forced to clean it up from every diesel engine they have sold for city transit service since 1952 on the basis there were no harmful parts in G.M. diesel exhaust (Exhibit 22).

We malign the Russian communists, but the first precept of communism is directed at the health of their

comrades (Exhibit 13). Here in the United States we have *General Motors whose first precept is grasping money and who in* 1951 *knew that the diesel exhaust from their engines was deadly in the Idarado mine, and with that knowledge when the same condition developed in Los Angeles from their diesel buses in* 1952 *which were displacing the electric street cars they used that knowledge to indict all public combustion as being the cause of their diesel engine air pollution.* The Russians used this same knowledge about diesel combustion to forbid diesel power to operate in their cities (Exhibit 13).

Exhibit 59 will show anhydrous nitric acid gas is inherent in diesel combustion. Using the same absorption test on gasoline engine exhaust will show this toxic acid is not present in gasoline engine exhaust. Forcing General Motors to show how much diesel power they have sold in city transit service, then multiplying this number by the weight of anhydrous nitric acid gas each diesel horsepower produces, will show where the toxic smog comes from.

The oxides of nitrogen in the mine air from the Idarado mine locomotives on the tunnel level were compressed with the air to 125 pounds per square inch. They were then transmitted in the 4" pipe air line 3000 feet to the rock drill in the scram drift where Mr. Torrey said "20 feet back they were extremely irritating" (Exhibit 11). This proves they are indestructible and they can go through a cigaret filter with ease (Exhibit 26).

To synthetically combine one molecule of nitrogen with one molecule of oxygen requires 21.85 kilo calories of heat, or 218,500 small calories of heat, to produce

14,008 + 16,000 = 30,008 grams NO (page 210, Thermo Chemistry, Reinhold Publishing Co.).

Only diesel engine combustion in city atmosphere has *the high heat* plus the 20 to 1 excess air to fuel ratio to endothermally combine oxygen and nitrogen to form nitric oxide (NO) which is only 3% water soluble, but in city air it exothermally spontaneously combines with oxygen to form nitrogen dioxide, NO_2, which gives off 13.57 kilo calories of heat, or 135,700 small calories of heat (page 211, Thermo Chemistry) to form 46 *grams of chemically water soluble anhydrous nitric acid* (NO_2) *gas.*

This chemical radical NO_2 — is negatively charged and puts all atmosphere particulate matter in colloidal dispersion (smog). It is also anhydrous nitric acid gas from diesel exhaust combining with rain water on a building to trickle down the bricks and eat the mortar, forming calcium nitrate, or with the bicarbonate in the blood and lungs to form a sodium salt and destroy lung tissue, and in a limestone detoxifying diesel exhaust gas conditioner to form calcium nitrate [$Ca(NO_3)_2$] by chemically absorbing the anhydrous nitric acid gas into the water, forming nitric acid (HNO_3) which is by the limestone neutralized to calcium nitrate. This saves the miners' lungs.

Big steam power plants do not have the excess air in their combustion to form this toxic acid. They use only the stoichometric 14.5 to 1 air to fuel ratio amount of air to burn or oxidize the hydrogen to water, H_2O, and the carbon to CO_2. Heating the surplus air would be a waste of heat. On these TV air pollution programs combustion steam condensate stems from these stacks and is alluded to as air pollution. Saturday Evening Post, Oct. 8, 1966 (Exhibit 28).

14.5

I have a rotary air suction pump on my exhibit demonstrator and can prove there is no ionized anhydrous nitric acid gas in the gas emanating from trashburners, a gasoline automobile, or such smoke stacks as the Commonwealth Edison has in New York City, or any other high thermal efficiency steam plant.

The one hour NBC TV program on air pollution spieled by Sandy Vanocher and the one hour Columbia TV air pollution spieled by Daniel Schoor are nothing but bunco programs which point to billions of dollars damage caused by the thousands of tons of *nitric acid gas yearly discharged into our cities' air principally by General Motors diesel power* and not from the public's *autos, trash burners, or their steam power plants.*

With the exception of the electric smelting or electric steel melting furnaces which might perhaps be in a city, I can prove by my Exhibit 59 there is nothing other than diesel power which discharges *synthetic nitric acid gas in city air.* From the exhaust of any diesel bus or diesel railroad locomotive I can in ten minutes convert the 50 *gallons of water* in my conditioner to *nitric acid having a pH of* 2.65, the same as I do in Exhibit "59."

The only difference between my conditioner in detoxifying diesel exhaust and the human lungs, I can replenish the limestone eaten up by the diesel exhaust but you can't replenish the human lungs. Here we have a physical and chemical means which can alleviate human suffering and promote health.

In 1923 I spent several months on the Denver Grand Jury which uncovered evidence so the petty jury could convict over 20 bunco artists. They only buncoed their

victims out of their money, but "Spielers" Vanocher and Schoor are hoping to bunco the U. S. public not only out of their money but out of what is more valuable, their health as well.

Exhibit "59" will expose this perfidy if permitted by this honorable Court.

Respectfully submitted,

JOSEPH P. RUTH, Respondent, Pro Se
1325 Glenarm Street
Denver, Colorado

LIBRARY

Office-Supreme Court, U.S.
FILED
NOV 12 1966
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS, **Third Party Plaintiff,**

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR REHEARING UNDER RULE 58

JOSEPH P. RUTH, **Respondent, Pro Se**
1325 Glenarm Street
Denver, Colorado

Messrs. Charles R. Ault, John H. Wilharm, Jr.,
1050 Union Commerce Building
Cleveland, Ohio 44115

Counsel of Record for Respondents.

November 14, 1966

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

INDEX

PAGE

CASE CITED

Mineral Separation North American Corporation v. Magma Copper Company, 280 U.S. 400 10

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

PETITION FOR REHEARING UNDER RULE 58

I request a rehearing under Rule 58 of my petition for writ of certiorari to demonstrate that under load diesel exhaust contains one-tenth of one per cent (0.10%) of toxic synthetic anhydrous nitric acid gas and proving this toxic gas is inherent in diesel combustion.

The value of my patent No. 2,611,680 of September, 1952, is dependent upon showing that diesel exhaust is laden with toxic nitric acid gas which my patent absorbs from the diesel exhaust and then, as depicted in Exhibit

"E," neutralizes it to a non-toxic calcium nitrate salt and the solution pH of 6.2 shows almost complete neutralization. I was prevented by my attorneys from making this demonstration which would have validated my patent in my suit before the Denver District Court, Civil Action 6679, against Blue River Constructors, et al. In the court's search for truth why did they not want the court to see Exhibit E demonstrated?

Well, if the public knew the millions of diesel horsepower now operating in our cities of which General Motors has made and sold 90% on the basis their diesel bus exhaust contained no harmful parts (GM diesel bus exhaust Exhibit I) when actually it contains toxic nitric acid gas (954 Parts Per Million by their own analysis) and Exhibit E would have shown that their 2-cycle diesel engine was wholly responsible for the toxic gray olefin smog (Exhibits A, B, C and D), that now covers our cities, (Exhibits G and H) General Motors could then no longer make the public's autos the scapegoat for the toxic gray olefin smog (Exhibits G and H), that now engulfs our cities from their 2-cycle diesel bus engines. My attorneys should have permitted me to demonstrate Exhibit "E" to the court if they had wanted my patent held valid in Denver as it had been held valid in Cincinnati. Judge Christenson in Denver holding my patent invalid did not have the evidence to hold my patent valid that Judge Druffel had in (Exhibit E) in holding my patent valid in Cincinnati.

If my patent was held valid there would have been an accounting. The public would have known the Blue River Constructors used tons of limestone in the diesel locomotive scrubbers to detoxify the toxic nitric acid gas

in diesel exhaust while driving the 23-mile Roberts tunnel (Exhibit K). This being so, it would take thousands of tons of limestone to neutralize the toxic nitric acid gas now going into our cities' air from the thousands of General Motors diesel buses and railroad locomotives serving our cities.

I wish to assure this honorable Court I make this request not to delay the case as my patent expires in a few years. Time is of the essence.

This ionized diesel exhaust electrically charges a city's atmosphere making the homogeneous toxic gray olefin smog now in our cities (Exhibits G and H). General Motors has engendered numerous press releases which indict the public's innocent gasoline automobiles as the cause of the toxic gray olefin smog that now besets our cities. The U. S. Public has only my Exhibit E which if given permission by the Supreme Court of the United States can demonstrate to the District Court and the people of the United States that it is the diesel exhaust and not the public's gasoline automobiles which has opened Pandora's box of smog in our cities. Exhibits A, B, C and D show what General Motors diesel 6-71 diesel bus engines did to the Idarado mine air and now in our cities air and their "Detroit Diesel"* engineers at the time, 1951, knew this toxic gray olefin smog was propagated by their 6-71 diesel bus engines in the Idarado mine air; as now in city air (Exhibits G and H).

Quoting from "Chemical and Engineering News" of October 24, 1966:

*General Motors division 3 which manufactures all diesel engines.

Sent to the President was a modestly revised air pollution control bill. Under this compromise bill the public health service receives $186 million over three years for grants to develop, establish, or improve local air pollution abatement programs. Current spending is 35 million a year. The bill is also designed to spur local activity by tying federal grants to assurances that recipients use the money to help release more local funds for pollution abatement.

This money will be used to avoid pinpointing the cause of the toxic gray olefin smog in our cities. The toxic gray olefin smog which covers our landscape comes as it did in the Idarado mine, Exhibits A, B, C and D, wholly from General Motors 2-cycle diesel bus engine crank case oil. This oil is used to lubricate the two synchronizing gears on the scavenging blower. A portion of this oil is sucked through the neoprene oil seals on the cycloidal blower's drive shafts and is necessary to lubricate these oil seals. This oil then mixes with the blower's scavenging air and is vaporized by the hot (800° F.) diesel exhaust when blowing the spent exhaust out of the cylinders of all General Motors 2-cycle diesel engines used on their diesel railroad engines and diesel buses.

The General Motors 6-71 2-cycle diesel bus engine is a very popular diesel engine for use on underground mining vehicles. We have our conditioners on hundreds of these engines in underground use. The crank case oil in the scavenging air and diesel exhaust condenses on the fist size limestone bed in passing through the interstices, since the velocity of the exhaust gas is low as is the temperature (100° F.) of the conditioner or scrubber as the miners call it. At intervals depending on the leakage

through the neoprene oil seals on the blower shafts, this oil coating on the limestone must be scrubbed off. This requires a special detergent which will dissolve the oil. This revivifies the surface of the limestone. We call this detergent XOTOX stabilizer (Exhibit "G"). After the detergent has dissolved the oil off the limestone during the scrubbing action the oil water sludge is drained out of the conditioner and fresh water is added and the unit is put back in operation. This crank case oil from the blower on the 2-cycle diesel railroad and bus engines is atomized by the exhaust heat into toxic gray olefin smog that covers our cities' landscape and fills our made canyons between skyscrapers (Exhibit F) with toxic gray olefin smog.

I pointed this out in letters, copies of which I sent to General Motors. Shortly thereafter General Motors had their A. C. division which make oil and air filters for their cars develop a device which on the public's automobiles infers this crank case oil which comes from their 2-cycle diesel engines and forms the toxic gray olefin smog in our cities comes from the public's gasoline automobiles. They then got the American Automobile Manufacturers Association to accept this device and reason for smog as coming from the gasoline automobile when actually it comes from their 2-cycle diesel power in city transit service.

Quoting from Popular Science of July 1962, page 47: "All (1963) cars will be equipped with positive crank case ventilation — the system for returning crank case fumes to the cylinders for reburning."

On the 1965 cars this worthless anti-smog anti-air

pollution device attached at the factory cost the gasoline automobile buyer $373,980,999 dollars.

It sells for around $59 each on the Plymouth. There were around 6,338,661* cars made last year with this worthless anti-air pollution device which cost the public $373,980,999.

They have buncoed the public out of almost $374 million last year because on 4-cycle diesel engines which have an oil filter spout breather from the crank case the limestone in my conditioner used on 4-cycle diesel engines in mines never need a detergent scrubbing since *there is no accumulation of crank case oil on the limestone from the 4-cycle diesel exhaust or oil smog in the mine air as with the 2-cycle General Motors 2-cycle diesel engines untreated exhaust,* proving the public's gasoline 4-cycle engine is innocent in causing the gray olefin smog in our cities.

If common law is nothing else but reason one may assume my attorneys were not interested in an accounting based on the 8 million dollars saved by Blue River Constructors' bid of $33 million against the $41 million of Peter Kiewitt and Morrison Knutson on the 23-mile Denver Water Board tunnel (Exhibit K). They were interested in keeping from the court and the public the anhydrous nitric acid radical (NO_2) which diesel engines discharge which makes that gray olefin smog in our cities which Exhibit "E" would have made evident and the basis upon which the judge could have held my patent valid.

*Ward's Automotive Reports.

General Motors makes about half of the gasoline pleasure cars, therefore the toxic gray olefin smog created by their diesel power in our cities will gross them around $187 million year after year. Exhibit "E" together with my testimony which I thought my attorneys would be anxious to put on would surely have got my patent validated, and an accounting on $8 million saved, but what is $8 million against $187 million General Motors grosses on the smog they create by their diesel engines in our cities with impunity in the absence of exposure by Exhibit E.

Air pollution, it has been estimated, costs the U. S. about $15 billion in economic losses in 1965, says George A. Hoffman, page 40, in the Scientific American of October 1965, and no wonder. I can in my invention make from a 6-71 General Motors diesel bus engine's exhaust 50 gallons of nitric acid having a pH from 2.5 to 3 in 10 minutes. I can prove in the course of a day's operation a diesel bus discharges around 50 pounds of toxic dilute nitric acid gas. Nitric acid gas is one of the three strongest acid gases extant and our citizens in our cities are breathing it 24 hours per day. Its tolerance is set at 5 Parts Per Million, whereas the tolerance for carbon monoxide is 100 P.P.M. The 0.1% of nitric acid gas in diesel exhaust is 20 times more toxic than carbon monoxide in auto exhaust.

Diesel exhaust gas toxicity is cumulative; because the lung tissue its nitric acid gas destroyed yesterday, is added to what it destroys today. The aged are especially susceptible to emphysema so induced. Carbon monoxide even when inhaled from cigaret smoke does not destroy lung tissue, the nitric acid gas from diesel exhaust

inhaled with it does, meaning that low concentrations of nitric acid gas from diesel exhaust in city air are *toxic* and the low concentrations of carbon monoxide from gasoline automobile exhaust are not; but by General Motors propaganda is made the scape-goat in the public's mind, shrouding in mystery the death and destruction being wrought in our cities by diesel bus exhaust.

In this petition I am recounting 30 years of diesel exhaust gas conditioning practice. I can assure you the toxic air mentioned in Exhibit "F" is the result of displacing the New York City crosstown electric cars and the elevated electric uptown passenger service with General Motors diesel buses. To hide the death dealing toxic gray olefin smog G. M. diesel buses brought to New York City infers the solution is for the public to buy General Motors new Electric Bear automobile introduced October 28, 1966 in Detroit. General Motors has made billions displacing smog-free electric coaches in our cities such as Denver, infers through George A. Hoffman it is the public's gasoline automobiles (October Scientific American page 34) which is the cause of the smog the diesel bus has brought to our cities by suggesting the public buy and use smog-free electric autos.

Without the court and the public being informed that it is the anhydrous nitric acid gas inherent in diesel internal combustion engine exhaust (which on account of its toxicity and smog propensity Russia excludes from their cities) and which is absent in gasoline automobile engine combustion, millions of dollars ($186 million) of the public's money will be wasted witch hunting for this basic enigmatic cause of our present cities' toxic air pollution from diesel anhydrous nitric acid exhaust gas and the

basic cause of our 400% rise in emphysema in the past ten years will not be found, and emphysema deaths (struggle for breath) will continue to rise in our cities.

Perfumed poison, a new additive that makes noxious diesel exhaust fumes smell like floral bouquets, is being merchandised by Albert Varley & Co., "The Architectural Forum," September 1966. (Exhibit "L")

The Supreme Court of the United States knows now that General Motors knew in April 1951 that the exhaust of their 6-71 diesel bus engines used in the Idarado mine was deadly. Exhibits A, B, C, and D.

Breathing the exhaust in the mine from General Motors 6-71 diesel bus engines, the Idarado miners cried out, "The air we breath is killing us." Breathing the exhaust on the New York City streets from General Motors 6-71 diesel bus engine exhaust, the New York Times editor cries out, "The air we breathe is killing us."

General Motors' propaganda subtlety continues to hide their deadly diesel exhaust.

Says Madison Avenue for their best client (ostensibly free), facetiously as did Marie Antoinette with disdain, put perfume in it and make it pleasant as well as deadly.

The public will take the humor out of the death General Motors diesel bus exhaust dispenses into our cities' air if I am granted permission to demonstrate Exhibit "E" to the Denver District Court as I did to Judge Druffel of the Cincinnati District Court, which will make known to the public the 0.1% of toxic anhydrous nitric acid gas inherent in General Motors diesel exhaust. (Exhibits "M" and "N")

By my attorneys' decision, Judge Christenson did not witness and observe the chemical and physical demonstration of Exhibit "E" which absorbed the anhydrous nitric acid gas from the diesel exhaust and the limestone thereafter continually automatically detoxifying it.

Mr. Justice Holmes in *Mineral Separation North American Corporation v. Magma Copper Company*, 280 U.S. 400, says, "There is no 'of course' as to what nature can do except as proved by observation and experiment."

My attorneys denied me the right to give to the Court the opportunity to observe the chemical reactions that transpired in the functioning of my chemical patent method of making diesel exhaust nonhazardous and proving it to be the toxic nitric acid gas in the diesel exhaust by the classic diphenylamine method (Scott's Analysis, page 631).

Judge Druffel, in holding my patent valid, observed from Exhibit "E" what Mr. Justice Holmes said was necessary in determining the function of a chemical patent. Judge Christenson did not make the same observation in holding my patent invalid, because this vital evidence was withheld from him by my attorneys. My right to a fair trial under Article 5 of the Constitution was denied me.

In the interest of humanity and the man on the street who must breath this anhydrous nitric acid gas from diesel exhaust during his working hours, I supplicate your indulgence to please reconsider.

Respectfully submitted,

JOSEPH P. RUTH, *Respondent, Pro Se*
1325 Glenarm Street
Denver, Colorado

Office-Supreme Court, U.S.
FILED
JAN 13 1967
JOHN F. DAVIS, CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants,**
Respondents.

MOTION FOR LEAVE TO FILE A CONSECUTIVE PETITION

JOSEPH P. RUTH, **Respondent, Pro Se**
1325 Glenarm Street
Denver, Colorado

Messrs. Charles R. Ault, John H. Wilharm, Jr.,
1050 Union Commerce Building
Cleveland, Ohio 44115

Counsel of Record for Respondents.

January, 1967

EASTWOOD PRINTING CO. • 2854 LARIMER STREET • DENVER, COLORADO

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1966

No. 453

JOSEPH P. RUTH, an individual,
Petitioner,

vs.

BLUE RIVER CONSTRUCTORS, an unincorporated association, and MID-VALLEY, INC., S. A. HEALY CO., J. A. JONES CONSTRUCTION COMPANY, A. S. HORNER CONSTRUCTION CO., INC., CHAS. H. TOMPKINS CO., COLORADO CONSTRUCTORS, INC., co-members comprising the unincorporated association BLUE RIVER CONSTRUCTORS, and THE CITY AND COUNTY OF DENVER, acting by and through its BOARD OF WATER COMMISSIONERS,

CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado, acting by and through its BOARD OF WATER COMMISSIONERS,
Third Party Plaintiff,

vs.

FIREMAN'S FUND INSURANCE COMPANY and THE AETNA CASUALTY AND SURETY COMPANY, **Third Party Defendants, Respondents.**

MOTION FOR LEAVE TO FILE A CONSECUTIVE PETITION

I request leave to file a consecutive petition for following reasons:

1. This case covers vital facts in regard to the health and welfare of our nation.

2. The presentation of these facts to this court by a layman is most difficult, particularly in regard to sequence. Which should I have presented first?

There are two basic facts in regard to the application of diesel power in city transit service that are vital to the health and welfare of our nation.

"A"—diesel exhaust contains 0.1% (one-tenth of one percent) of toxic anhydrous nitric acid gas (NO_2) which when inhaled is converted to anhydrous nitric acid on lung tissue, destroying the lung tissue. The public should be informed and protected from this abstruse menace to public health.

"B"—The two-cycle diesel engine used almost universally in inter- and intra-city transit service engenders the SMOG that now besmirches our cities. The *big corporations* (manufacturers and users) because of the high thermal efficiency of this diesel engine are waxing rich by hiding the disease and discomfort caused by diesel exhaust upon the public in general. They use money and their influence over the press to make enigmatic these deadly characteristics of the two-cycle diesel engine and also attribute them to the public's gasoline autos. Demonstrating the utility vital in validating my patent before the court would also have shown that big corporations enamored to the high thermal efficiency of the diesel engine feigned ignorance of the tenth percent of deadly anhydrous nitric acid gas inherent in diesel exhaust and to the crankcase oil smog engendered in our cities by the two-cycle diesel engine which is condensed out of the diesel exhaust by my invention.

By actual test at Horse Creek, Wyoming, 12-12-66 with my water manometer I found the *vacuum sucking* the two cycle diesel engine crankcase oil through the oil seals on the cycloidal blower shafts into scavenging air to be equivalent to 17.5 inches of water.

By actual test in Denver, Colorado, 12-13-66 with the same water manometer I found the vacuum on my Chrysler oil filler spout to be less than one inch of water and reversible like a sine wave up and down. This is the spout which must now by law be legally connected to the carburetor intake at a cost of around $65 each to hide the diesel crankcase oil smog which by a 17.5 inches of water vacuum is being sucked into the two-cycle diesel engine's scavenging air, then heated to 800° F. by the diesel exhaust and then discharged into our cities' air where, upon rising and cooling, it condenses to crankcase oil smog, in depth becomes blinding.

Granting my petition will expose the greatest fraud ever foisted upon a supposedly free people.

It has taken lots of money to create this derogatory law. The public has no relief except my knowledge of what is right and the right to demonstrate to the court that what I contend is true. The Supreme Court has the power to expose this fraud on the public.

The difference between the money of the General Motors Corporation, the American railroads and the city diesel bus transit lines, who are wittingly subrosa polluting our city air and laying it onto the public by law, is the Supreme Court of the United States who can give me permission to expose the fraud and thereby abrogate the ill-conceived law.

My request for a consecutive petition for a re-hearing is covered in "B." I feel I was perhaps remiss in not presenting "B" first to this Court. (My lawyers had all of these facts regarding the deadly characteristics of diesel exhaust (smog and toxicity) but refused to

present them to the Court in Civil Action 6679 against Blue River et al.) .

My invention absorbs the anhydrous nitric acid gas (NO_2) inherent in diesel engine exhaust and is by the violent agitation absorbed into the water. The limestone in the water converts the toxic nitric acid (HNO_2) to a non-toxic calcium salt. I can show the District Court if my motion is granted and this Court's decision is favorable that the toxic diesel exhaust gas now in our cities' air is being inhaled 24 hours per day in low concentration by men, women and children and on quiescent atmospheric days in high concentration.

My invention working on mining equipment having the 6-71 two-cycle diesel bus engine which is also used on city buses, drops the diesel exhaust gas temperature from 800° F. to 100° F. This drop in temperature condenses out on the limestone in the conditioner the crankcase oil from the diesel engine's exhaust which untreated now at 800° F. goes into our cities' air and when it condenses out crankcase oil smog is formed in our cities' air.

The only people who can benefit by keeping the deadly characteristics of the two-cycle diesel engine's exhaust secret which now permeates our cities' air are the diesel engine manufacturers, the railroad users and the companies having diesel buses in city transit service.

The public can be benefitted in two ways by the exposure of the deadly inherent characteristics of diesel exhaust.

First they will know the deadly nitric acid gas air pollution *is not coming from their gasoline cars but comes*

from the diesel engine. They will know the crankcase oil smog comes from the two-cycle diesel engine and not from their cars. Then why the $65.00 anti-smog gadget on their cars?

Second, knowing the toxic anhydrous nitric acid gas and crankcase oil smog comes from the diesel engines in city transit service and not from their cars, they need not hesitate in forcing the big corporations to desmog and detoxify their diesel engine's exhaust used in city service, reversing the onus for the cause of smog in our cities.

The demonstration I request can expose this perfidy on the public if given the opportunity by this honorable Supreme Court of the United States to demonstrate to a judge in the 10th Circuit the same demonstration I made to Judge Druffel in the 6th Circuit.

This case puts the United States Supreme Court, as it did my lawyers, in either the status of the Rabbi and the Levite, or the Good Samaritan; Luke 10:30-37. The public is being clobbered.

I consider this case most exceptional and humbly ask this Court to give profound consideration to my physical and chemical exhibitions demonstrating the perfidy the public is being subjected to.

Your Suppliant,

JOSEPH P. RUTH
1325 Glenarm Street
Denver, Colorado 80201